

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 06-04

July 24, 2006

Absent Judge Serving in Another Court

Issue

May a full-time justice of the peace regularly absent himself or herself from court in order to serve as an associate municipal court judge in another county?

Answer: No.

Facts

A full-time justice of the peace is regularly absent one day a week when the judge travels to another county to serve as an associate municipal court judge in that jurisdiction. The judge does not schedule hearings in the justice court on that day, and judges from other courts must handle the justice court's emergency matters when the judge is absent.

Discussion

We believe Canons 3B(1) and 3B(8) apply to this situation. Canon 3B(1) states that “[a] judge shall hear and decide matters assigned to the judge except those in which disqualification is required.” Canon 3B(8) requires a judge to “dispose of all judicial matters promptly, efficiently and fairly.” The commentary to the latter canon is also instructive when it states that “[p]rompt disposition of the court’s business requires a judge to devote adequate time to judicial duties” Taken together, these ethical standards impose a duty on a judge to be readily available in his or her own court to promptly dispose of all the court’s business without relying on other judges to handle the cases that are routinely filed in the court.

While these ethical standards apply to all courts in the state, there is a statute allowing justices of the peace to sit in municipal courts located in the same community with which these ethical standards must be reconciled. Under A.R.S. § 22-403(B), a justice of the peace sitting in a particular city may hold the office of magistrate without forfeiting his office as justice of the peace. This arrangement is most commonly used in communities where the justice court and the municipal court share facilities or where both judgeships are part-time.

Section 22-403(B) states that “A justice of the peace in the city or town shall be eligible to the office of magistrate without thereby forfeiting his office as justice of the peace.” This language appears to limit such dual judicial service to the justice court precinct in which the city or town is located. This is consistent with A.R.S. § 22-402(C)(1), which authorizes an intergovernmental agreement for operation of a municipal court explicitly between “A justice of the peace in whose jurisdiction a city or town is located and the county in which the city or town is located.” The service of a justice of the peace in the city or town outside of the

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judge's precinct may not only be unauthorized, but may subject the judge to a challenge that the judge's primary office has been vacated or forfeited. *See Perkins v. Manning*, 59 Ariz. 60, 122 P.2d 857 (1941) ("public policy requires that anyone accepting and retaining a public office should not place himself, by the accepting of another office, in such a position that it is physically impossible for him properly to perform the duties of both offices")

As long as a justice of the peace can devote adequate time to dispose of all judicial matters in both courts promptly, efficiently and fairly, there is no ethical violation in serving a secondary judgeship. If a justice of the peace serves as a part-time municipal court judge as permitted by Section 22-403(B), the judge does not need to worry about vacating the justice of the peace office. A justice of the peace could also sit in a local municipal court on a limited basis, for example, once a week for part of a day, without an intergovernmental agreement, assuming that the judge is reasonably available to handle emergency or urgent matters in his or her own court, and that the time away from the justice court is made up in some way so as to avoid potential problems involving dual compensation. The instant question, however, deals with a full-time justice of the peace working as a municipal judge in another county one day a week. Serving in a different county where the judge is unavailable to hear matters in the judge's court is not the same as serving where the courts are co-located or located within a reasonable distance from one another.

We believe that a judge violates Canon 3B(1) if court matters are routinely assigned to other judges because the traveling judge is regularly absent from court during working hours. Emergency and urgent matters, such as orders of protection and warrants, may be presented to the court during any or all of the days the court is open for business each week, and the assigned (or elected) judge must be available to address them within a reasonable amount of time, except for ordinary vacation and sick leave.

A judge also violates Canon 3B(8) if the judge regularly is unable to devote adequate time to his or her judicial duties. Motions and administrative concerns should be addressed daily, and it may frequently be necessary and efficient for the court staff to set hearings and jury trials on the day the judge is away from the court handling cases for a different court. The judge should be available to cover those matters.

Accordingly, we conclude that a judge's regular absence from the court during working hours is likely to adversely affect the efficient administration of the court. A full-time justice of the peace, therefore, should not regularly absent himself or herself from court to serve as an associate municipal court judge in another county.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3B(1), 3B(8) and related commentary (1993).

Other References

Perkins v. Manning, 59 Ariz. 60, 122 P.2d 857 (1941).

Arizona Revised Statutes §§ 22-402(C)(1) and 22-403(B)